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The truth about the Philadelphia Outfest arrests: Hate crimes laws are not used to punish speech

Federal hate crimes legislation is an important tool to combat violent, bias motivated crime. Unfortunately, some right-wing conservative organizations, including the antigay American Family Association, condemn this legislation and push legislators to vote against its passage.

These groups attempt to exploit the false but common argument that this legislation will burden free speech, somehow turning federal authorities into “thought police.” To bolster this argument, they cite the arrest of several members of the group “Repent America” at the October 2004 Philadelphia Outfest, a large annual lesbian, gay, bisexual and transgender block party. In fact, the Outfest incident had nothing to do with constraint of free speech.

Here are the true facts regarding the incident:

The afternoon of Outfest, a group of eleven demonstrators entered the eight-block area where Outfest was being held. The leader of the demonstrators carried a Bible in one hand, and a bullhorn in the other. A frequent presence at LGBT events, the members of Repent America had previously touted their message - “Homosexuality Is Sin, Christ Can Set You Free” – at many gay-pride events.

Soon after their arrival, the demonstrators were surrounded by Outfest supporters armed with pink whistles and eight-foot-tall boards of pink-colored insulation mounted on sticks. Eventually, a crowd formed and in an effort to prevent violence, police instructed the demonstrators to go to the edge of the Outfest area. The demonstrators ignored three orders to move and were told by police they would be arrested if they refused to comply. At this point, demonstrators sat down in the street, forcing police to remove them.

The group was charged with numerous offenses including criminal conspiracy, obstructing a highway, failure to disperse, disorderly conduct and violating Pennsylvania’s hate crimes law, referred to as ethnic intimidation. Four of the antigay activists were barred from attending future organized LGBT events as a condition of bail.

Pennsylvania’s hate crimes law specifies a group of violent crimes, including arson and destruction of property, that can carry an additional charge of ethnic intimidation if committed “with malicious intent toward the actual or perceived race, color, religion, national origin, ancestry, mental or physical disability, sexual orientation, gender or gender

identity of another individual or group of individuals.”¹ This charge is added to the underlying offense, for example, the arson. To be convicted of ethnic intimidation, a person must be convicted of the underlying offense. In other words, it is only violent actions that are punished, not mere thoughts or speech.

After being charged, the individuals associated with Repent America requested that a federal court block their prosecution in state court on the charges resulting from the arrests at Outfest. The federal judge refused to intervene. Soon after, a state judge revoked the bail condition that had ordered the four of the antigay activists away from organized gay events, calling the restriction an unreasonable restraint on free speech.

On February 17, 2005, the state court, finding no violation of the Pennsylvania hate crime law, dismissed all criminal charges against the remaining antigay activists. In dismissing the case, Philadelphia Common Pleas Court Judge Pamela Dembe said that the demonstrators simply had been exercising their First Amendment rights.² The members of Repent America filed suit against the City alleging a violation of their civil rights.

The suit against the City and Outfest organizers Philly Pride, was dismissed on January 18, 2007, by the United States District Court for the Eastern District of Pennsylvania which granted summary judgment for the City. The Court’s ruling contrasts the Philly Pride organizers of OutFest, who properly obtained a permit for their event and followed police instructions, with the anti-LGBT protesters, who did not apply for a permit, used bullhorns in an attempt to drown out Philly Pride’s speech, refused to follow police orders, acted belligerently, and threatened the peace by antagonizing a large crowd of people.³ The Court found that police acted properly by attempting to move the protesters and arresting them when they failed to comply. The members of Repent America were not prevented from speaking - it was their conduct, not the content of their speech, which led to their arrests. The members of Repent America appealed the District Court’s decision. On July 15, 2008, the U.S. Court of Appeals for the Third Circuit affirmed the District Court’s decision.

But the real story of this case is how well the criminal justice system worked. When a judge reviewed the charges, she properly recognized that what had occurred was not a hate crime – and she dropped the charges. The actions of the protesters – though confrontational and offensive – were not typical of the kind of conduct which hate crime laws were designed to address. Far from a demonstration of the infirmities of hate crime laws, the Outfest case actually serves as a demonstration that these laws will be properly applied.

Some state hate crime laws have been on the books for 25 years. One isolated case of prosecutorial overreaching does not make a very compelling case against hate crime laws – especially when the federal government and 45 states and the District of Columbia have enacted such laws, when they are supported by every major law enforcement organization in America, and when a unanimous Supreme Court approved their constitutionality in 1993.

¹ 18 Pa.C.S. § 2710 (2005).

² Larry Eichel, *Charges against 'Philadelphia 4' tossed; A judge said activists who protested a gay event in Center City were exercising their rights*, The Philadelphia Inquirer, February 18, 2005 at A1.

³ A video the protesters filmed undermined their own claims by revealing their disruptive, confrontational actions.